

**United States Bankruptcy Court Southern District of New York**

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In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered

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**Notice of Hearing on Eleventh Omnibus Objection to Claims  
(Misclassified Claims)**

**B Fischer Construction LLC  
Response on Objection to Claims**

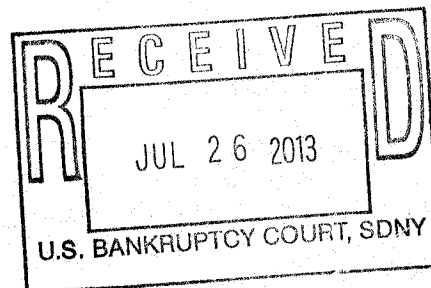
In response to the Objection, B. Fischer Construction, LLC, Brian Fischer, OPPOSES the request for reclassification of our claim. Attached you will find documentation supporting the reason for our claim and the required steps that were taken in order for B. Fischer Construction, LLC to properly assert a security interest against the Debtors and/or priority claim(s).

Please return any reply to our response to: B Fischer Construction LLC, Brian J. Fischer, 1044 Mayer Street, Menasha, Wisconsin 54952. Brian J. Fischer, Owner/Operator, Representing B. Fischer Construction LLC, may also be contacted by phone at (920) 486-1083.

Dated: July 24, 2013

*Brian Fischer*

Brian J Fischer, Owner/Operator  
B. Fischer Construction, LLC  
1044 Mayer Street  
Menasha, WI 54952  
Office: (920) 486-1083  
Fax: (920) 486-7161



**VIA CERTIFIED AND REGULAR U.S. MAIL**

December 1, 2011

GMAC Mortgage  
P.O. Box 52052  
Phoenix, AZ 85072

Re: B. Fischer Construction, LLC  
Property Address: 1241 Briarwood Dr., Menasha, WI 54942  
Date of Loss: 7/20/2010  
Account No. 7442553616

Dear Whom it May Concern:

Please be advised that I represent B. Fischer Construction, LLC (hereinafter "Fischer Construction") regarding amounts that remain due and owing from the work performed to 1241 Briarwood Dr., Menasha, WI 54942. As you are aware, Fischer Construction provided work that totaled \$14,603.41. The property was a foreclosure property; this is the reason why arrangements were being coordinated directly with GMAC Mortgage (hereinafter "GMAC") and payments were coming directly from GMAC.

GMAC voluntarily took on a duty to Fischer Construction to include Fischer Construction as a named payee on checks paying for services provided by Fischer Construction. I am enclosing four (4) checks dated 10/19/10, 10/19/10, 11/17/10, and 2/22/11 respectively that establish GMAC voluntarily took on the duty to name the property owner, Patty L. Kolaskinski, in addition to Fischer Construction as payees; therefore, making GMAC liable to Fischer Construction. In April or May of 2011, a GMAC representative informed Fischer Construction that an error had been made and that the final check in the amount of \$4,963.48 had been sent out listing Patty L. Kolaskinski as the sole payee on the check, negligently leaving Fischer Construction off as a payee.

There are three (3) elements to voluntary assumption of duty to a third person: 1) a party volunteers to provide service to another; 2) the party should have recognized those services were necessary for the protection of a third person or their property; and 3) the party failed to exercise ordinary care in providing the services; and harm was suffered because of reliance by the third party upon the party to provide the services. Stephenson v. Universal Metrics, Inc., 2002 WI 30, 251 Wis.2d 171, 641 N.W.2d 158, and WI Jury Instruction 1397.

Copy

All three elements are satisfied in the instant case establishing that GMAC voluntarily assumed a duty to Fischer Construction as the third party to ensure payment and notification of included Fischer Construction.

GMAC breached its duty to Fischer Construction when it sent a final payment in the amount of \$4,963.48 with Patty L. Kolaskinski as sole payee. As a result of GMAC's negligence and breach of duty, Fischer Construction has sustained damages by not receiving payment in the amount of \$4,963.48 in addition to legal expenses to recover amounts due and owing. Fischer Construction has not been paid the final remaining balance of \$4,963.48.

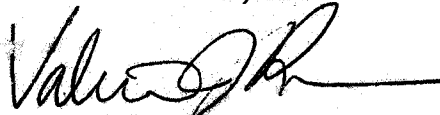
GMAC knew or should have known that continuing to include Fischer Construction as a named payee on future payment checks was necessary for the protection of Fischer Construction to be paid for the work it performed. Further, GMAC failed to exercise ordinary care in failing to include Fischer Construction as a payee in the final payment; as a result, GMAC is liable to Fischer Construction for this breach.

I have laid out the legal basis for recovery for Fischer Construction. Fischer Construction has asked that I offer GMAC resolution of the matter prior by resorting to the Courts. In this regard, please forward immediate payment in the amount of **\$4,963.48** made payable to Epiphany Law Trust, 4211 N. Lightning Dr., Appleton, WI 54913 by **Wednesday, December 14, 2011**. If we have not received payment or reached any payment agreement with GMAC by that time, we are prepared to commence litigation action against GMAC in Wisconsin Courts.

I look forward to your anticipated cooperation in settling this matter. Please contact me if you have any questions.

Yours truly,

EPIPHANY LAW, LLC



Valerie J. Revnew

Attorney at Law

[vrevnew@epiphanylaw.com](mailto:vrevnew@epiphanylaw.com)

VJR/amn

Enclosure

Copy to B. Fischer Construction

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p><b>GMAC Mortgage</b>  <b>P.O. Box 52052</b>  <b>Phoenix, AZ 85072</b></p>		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><b>X</b></p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>2. PS Form 3811, February 2004</p> <p>Domestic Return Receipt</p> <p>102586-02-M-1540</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

**CERTIFIED MAIL**



7011 1570 0003 5885 6164



**U.S. Postal Service<sup>TM</sup>**  
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 Street, Apt. No.,  
 or PO Box No.  
 City, State, ZIP+4

**GMAC Mortgage**  
**P.O. Box 52052**  
**Phoenix, AZ 85072**



4211 North Lightning Drive  
 Appleton, WI 54913

**GMAC Mortgage**  
**P.O. Box 52052**  
**Phoenix, AZ 85072**

10 19 10

**GMAC Mortgage**

Pg 5 of 10

JPMorgan Chase Bank, N.A.  
Chicago, Illinois

12037269

\$2,081.76

**\*\*TWO THOUSAND EIGHTY ONE DOLLARS AND 76 CENTS\*\***

**PAY TO THE  
ORDER OF**

**GMAC MORTGAGE DISBURSEMENTS**

**PATTY KOLASINKI & S.  
FISCHER CONSTRUCTION LLC  
1241 BRIARWOOD DR  
MENASHA, WI 54952**

*Denise Bauer*  
*John Bork*  
VOID AFTER 60 DAYS

⑈ 12037269⑈ ⑆071923226⑆ 000944300⑈

ccount 944300 Serial 12037269 Amount 00002081.76 Date 10-22-2010 TR 71923226 Disc 1

PROSPERA CREDIT UNION  
OCT 22 2010  
2756-7942-9

*Patty Kolasinski  
Fischer Construction  
Briarwood Dr  
Menasha, WI*

CHECK DATE  
11 17 10

**GMAC Mortgage**

CHECK NO.  
12057432

JPMorgan Chase Bank, N.A.  
Chicago, Illinois

AMOUNT  
\$3,469.61

718

\*\*THREE THOUSAND FOUR HUNDRED SIXTY NINE DOLLARS AND 61 CENTS\*\*

PAY TO THE  
ORDER OF

GMAC MORTGAGE DISBURSEMENTS

PATTY KOLASINKI & B.

FISCHER CONSTRUCTION LLC  
1241 BRIARWOOD DR  
MENASHA, WI

54952

*Denise Bauer*

*[Signature]*  
VOID AFTER 60 DAYS

⑈ 12057432⑈ ⑈ 071923226⑈ 000944300⑈

Account 944300 Serial 12057432 Amount 00003469.61 Date 11-22-2010 TR 71923226 Disc 1

2759-7942-9-  
NOV 8 2 2010  
PROSERA CREDIT UNION  
Menasha, WI

*Patty Kolasinski  
Fischer Construction  
Menasha, WI*

02 22 11

**GMAC Mortgage**

12125353

\$2,700.72

**\*\*TWO THOUSAND SEVEN HUNDRED DOLLARS AND 72 CENTS\*\***

**PAY TO THE  
ORDER OF**

**GMAC MORTGAGE DISBURSEMENTS**

**PATTY KOLASINKI & B.**

**FISCHER CONSTRUCTION LLC  
1241 BRIARWOOD DR  
MENASHA, WI**

**54992**

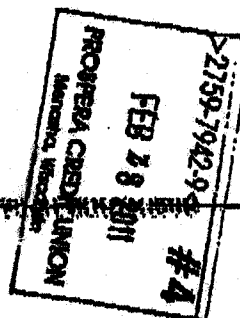
*Dennis Brouwer*

*John Bork*

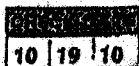
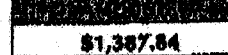
VOID AFTER 60 DAYS

**⑈ 1 2 2 5 3 5 3 ⑈ ⑆ 0 7 1 9 2 3 2 2 6 ⑆ 0 0 0 9 4 4 3 0 0 ⑈**

ACCOUNT 944300 Serial 12125353 Amount 00002700.72 Date 02-28-2011 TR 71923226 Disc 1



*Patty Kolasinski*  
*Bork*

**GMAC Mortgage**

\*\*ONE THOUSAND THREE HUNDRED EIGHTY SEVEN DOLLARS AND 84 CENTS\*\*

PAY TO THE  
ORDER OF

GMAC MORTGAGE DISBURSEMENTS

PATTY KOLASINKI &amp; B.

FISCHER CONSTRUCTION LLC  
1241 BRIARWOOD DR  
MENASHA, WI

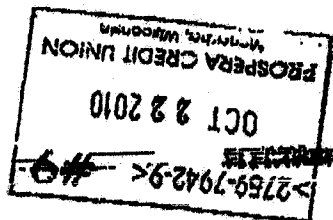
54952

*Dennis Barrow**[Signature]*

VOID AFTER 60 DAYS

⑈12037267⑈ ⑆071923226⑆ 000944300⑈

Account 944300 Serial 12037267 Amount 00001387.84 Date 10-22-2010 TR 71923226 Disc 1

*Patty Kolasinski  
Fischer Construction  
Fischer Const LLC*



**Wisconsin Circuit Court Access (WCCA)**  
**B Fischer Construction LLC vs. Patty L Kolasinski**  
**Winnebago County Case Number 2011CL000017**

<b>Filing Date</b>	<b>Case Type</b>	<b>Case Status</b>
06-20-2011	Construction Lien	Filed Only
<b>Class Code Description</b>	<b>Responsible Official</b>	
Construction Lien	Fremgen, Diane	

**Parties**

<b>Party Type</b>	<b>Party Name</b>	<b>Party Status</b>
Claimant	B Fischer Construction LLC	
Owner	Kolasinski, Patty L	

**Civil Judgment(s)**

<b>Type</b>	<b>Debtor Name</b>	<b>Multiple Debtors</b>	<b>Amount</b>	<b>Satisfaction</b>	<b>Judgment Status</b>	<b>Satis. Date</b>
Construction lien	Kolasinski, Patty L	No	\$ 4,963.48	No		

**Party Details**

**B Fischer Construction LLC - Claimant**

<b>Date of Birth</b>	<b>Sex</b>	<b>Race<sup>1</sup></b>
<b>Address</b>	<b>Address Updated On</b>	
1044 Mayer St, Menasha, WI 54952	06-20-2011	

**Kolasinski, Patty L - Owner**

<b>Date of Birth</b>	<b>Sex</b>	<b>Race<sup>1</sup></b>
<b>Address</b>	<b>Address Updated On</b>	
1241 Briarwood Dr, Menasha, WI 54952	06-20-2011	

**Construction Lien**

<b>County</b>	<b>Case Number</b>	<b>Case Caption</b>
Winnebago	2011CL000017	B Fischer Construction LLC vs. Patty L Kolasinski

## Case Details for 2011CL000017 in Winnebago County

<b>Judgment/Lien Date</b>	<b>Total Amount</b>	<b>Warrant Number</b>
06-20-2011	\$ 4,963.48	

<b>Date and Time Docketed</b>	<b>Service/Event Date</b>
06-20-2011 at 03:00 pm	10-25-2010 to 03-04-2011

<b>Satisfaction</b>	<b>Judgment Status</b>	<b>Date</b>	<b>Type Of Tax</b>
No			

**Property/Remarks**

See File for Legal Description

**Judgment Parties**

<b>Party Type</b>	<b>Name</b>	<b>Dismissed</b>	<b>Status</b>	<b>Address</b>
Creditor	B Fischer Construction LLC	No	Active	1044 Mayer St, Menasha, WI 54952
Debtor	Kolasinski, Patty L	No	Active	1241 Briarwood Dr, Menasha, WI 54952

**Costs / Amounts**

<b>Description</b>	<b>Amount</b>
Judgment amount	\$ 4,963.48

1 The designation listed in the Race field is subjective. It is provided to the court by the agency that filed the case.

Non-Court activities do not require personal court appearances. For questions regarding which court type activities require court appearances, please contact the Clerk of Circuit Court in the county where the case originated.